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09/800,717	03/07/2001	Martin W. McKinnon III	10263-32045	5106

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SCIENTIFIC-ATLANTA, INC.
INTELLECTUAL PROPERTY DEPARTMENT
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LAWRENCEVILLE, GA 30044

EXAMINER

MATTIS, JASON E

ART UNIT	PAPER NUMBER
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2665

DATE MAILED: 12/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/800,717

Applicant(s)

MCKINNON ET AL.

Examiner

Jason E. Mattis

Art Unit

2665

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 and 31-64 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-29 and 31-64 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This Office Action is in response to the amendment filed on 9/19/05. Claims 1-29 and 31-64 are currently pending in the application.

Claim Objections

2. Claims 31-38 are objected to because of the following informalities:

Claim 30 was previously cancelled by the amendment filed on 2/22/05. Claims 31-34 directly depend on cancelled claim 30. Claims 35-38 indirectly depend on cancelled claim 30. It is recommended that these claims be amended such that they do not depend on cancelled claim 30.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-4, 6, 8-11, 13, 15-25, 46-54, 28-31, 33-37, 39-40, 42-54, 57-59, 61, and 62 rejected under 35 U.S.C. 102(e) as being anticipated by Pandya et al. (U.S. Pat. 6671724).

With respect to claim 1, Pandya et al. discloses a method of providing access across a shared communications medium in a downstream direction towards competing users **(See column 4 lines 22-29 and Figure 2 of Pandya et al. for reference to a method of managing network resources across a shared communications medium in a downstream direction)**. Pandya et al. also discloses monitoring access usage by each user during a time interval **(See column 15 lines 46-58 of Pandya et al. for reference to monitoring and reporting the amount of bandwidth used by a user device during a prior time period)**. Pandya et al. also discloses forecasting downstream network access usage by each user during a future time interval based on the monitored network access usage by each user **(See column 16 line 29 to column 17 line 4 and Figure 11A of Pandya et al. for reference to based on monitored usage, UB, forecasting that a user will need more network access, as in step S6 where it is determined that the used bandwidth and maximum allocated bandwidth are approximately equal with the fair share bandwidth being more than the maximum allocated bandwidth, or forecasting that a user will need less network access, as in step S8 where it is determined that the used bandwidth is less than the maximum allocated bandwidth)**. Pandya et al. further discloses based on the forecasting, allocating network access to each user on a per user basis for a future time interval **(See column 16 line 28 to column 18 line 17 and Figures 11A-**

11D of Pandya et al. for reference to methods of dynamically allocated bandwidth to users based on the monitored bandwidth UB and forecasted bandwidth for a future time period).

With respect to claim 39, Pandya et al. discloses a method of providing network access across a shared communications medium between competing users (See column 4 lines 22-29 and Figure 2 of Pandya et al. for reference to a method of managing network resources of users across a shared communications medium). Pandya et al. also discloses monitoring network access usage by each user during a time interval **(See column 15 lines 46-58 of Pandya et al. for reference to monitoring and reporting the amount of bandwidth used by a user device during a prior time period).** Pandya et al. further discloses forecasting upstream and downstream network access usage by each user during a future time interval based on the monitored network access usage by each user **(See column 16 line 29 to column 17 line 4 and Figure 11A of Pandya et al. for reference to based on monitored usage, UB, forecasting that a user will need more network access, as in step S6 where it is determined that the used bandwidth and maximum allocated bandwidth are approximately equal with the fair share bandwidth being more than the maximum allocated bandwidth, or forecasting that a user will need less network access, as in step S8 where it is determined that the used bandwidth is less than the maximum allocated bandwidth).** Pandya et al. further discloses based on the forecasting, allocating network access to each user for the future time interval **(See column 16 line 28 to column 18 line 17 and Figures 11A-11D of Pandya et al.**

for reference to methods of dynamically allocated bandwidth to users based on the monitored bandwidth UB and forecasted bandwidth for a future time period).

With respect to claim 2, Pandya et al. discloses that network access comprises bandwidth across the shared communications medium for consumption by each user (See column 15 lines 46-58 of Pandya et al. for reference to monitoring the amount of bandwidth used by each user).

With respect to claims 3 and 61, Pandya et al. discloses that network access allocation represents a bandwidth allowance of a respective user during the future time interval (See column 15 lines 46-58 of Pandya et al. for reference to the bandwidth CB being a user's "fair share" of available bandwidth, and thus a bandwidth allowance for the upcoming cycle).

With respect to claims 4 and 62, Pandya et al. discloses that network access allocation represents bandwidth utilized by each user during the future time interval (See column 15 lines 46-58 of Pandya et al. for reference to the bandwidth CB being the expected amount, or "fair share" amount, of bandwidth a user will use in the upcoming cycle).

With respect to claim 6, Pandya et al. discloses that the time interval for which network access usage is monitored and the future time interval are equal in length (See column 21 lines 39-54 of Pandya et al. for reference to the default interval for recalculating bandwidth allocations being 5 seconds, meaning that at equal 5 second intervals the bandwidth is monitored and then the future bandwidth allowance is calculated for the next 5 second interval).

With respect to claims 8-9, Pandya et al. discloses collecting data representative of logic data units and the number of bytes and data packets transmitted to each user during a time interval **(See column 15 lines 23-58 of Pandya et al. for reference to monitoring and reporting the amount of bandwidth used by each user, which is the same as collecting data representative of a number of logic data units transmitted during a time interval since a bandwidth is always measured in units of data per time, and for reference to monitoring the amount of transmitted packets during a cycle, or time period).**

With respect to claims 10 and 11, Pandya et al. discloses collecting data representative of the number of logical data unit, bytes, and packets of the user that are dropped during a time interval **(See column 21 lines 17-37 of Pandya et al. for reference to measuring the loss of a data stream to compare this loss against a minimum threshold, which means that the number of bytes and packets dropped, or lost, during a time interval is measured).**

With respect to claim 13, Pandya et al. discloses that the shared communications medium is part of a Shared Access Carrier Network **(See column 3 lines 52-61 and Figure 2 of Pandya et al. for reference to the network being a shared communications medium since the devices 20 and 22 all share a common network link 24 and a common connection to router 18).**

With respect to claim 15, Pandya et al. discloses that the Shared Access Carrier Network comprises a wireless network **(See column 4 line 62 to column 5 line 11 and Figure 2 of Pandya et al. for reference to the network wireless computing**

devices, mobile telephones, or pagers, meaning the network is a wireless communications network).

With respect to claim 16, Pandya et al. discloses prioritizing the users for allocated network access (See column 15 lines 1-22 of Pandya et al. for reference to re-allocation of bandwidth being based on priority data for users).

With respect to claims 17 and 46, Pandya et al. discloses that the prioritizing is based on fairness considerations (See column 15 lines 1-22 of Pandya et al. for reference to re-allocating user bandwidth according to priority data so that each user is allocated a fair share of the available bandwidth).

With respect to claims 18 and 47, Pandya et al. discloses that users are prioritized based on user throughput during a time interval (See column 16 lines 20-27 of Pandya et al. for reference to providing bandwidth first to agents that have low allocations, meaning the bandwidth allocation is prioritized making a low throughput connection have a higher priority relative to a high throughput connection).

With respect to claims 19 and 48, Pandya et al. discloses that the users are prioritized based on data loss for each user during a time interval (See column 21 lines 16-37 of Pandya et al. for reference to giving priority of bandwidth allocations to users that have a data loss that is above a minimum threshold).

With respect to claims 20 and 49, Pandya et al. discloses that users are prioritized based on network access usage for a particular time of day (See column 15 lines 1-22 of Pandya et al. for reference to priority being based on time of day).

With respect to claims 21 and 50, Pandya et al. discloses that users are prioritized based on both user throughput and data loss of the user during a time interval **(See column 21 lines 16-37 of Pandya et al. for reference to giving priority of bandwidth allocations to users based on both a minimum bandwidth and a minimum data loss requirement)**.

With respect to claims 22 and 51, Pandya et al. discloses that users are prioritized based on an established minimum quality of service standard **(See column 14 lines 52-68 of Pandya et al. for reference to allocating bandwidth using priorities based on policy-based QoS techniques by coordinating service-level enforcements)**.

With respect to claims 23 and 52, Pandya et al. discloses that prioritizing is based on service level agreements of the users **(See column 14 lines 52-68 and column 21 lines 16-37 of Pandya et al. for reference to reference to allocating bandwidth using priorities based on policy-based QoS techniques by coordinating service-level enforcements and for reference to allocating bandwidth based on minimum thresholds of service level requirements for users)**.

With respect to claims 24 and 53, Pandya et al. discloses that the service level agreements specify minimum levels of network access for users and prioritizing includes comparing the monitored levels of network usage with the minimum levels of network access and giving priority when the monitored level is below the minimum level **(See column 21 lines 16-37 and Figure 11A-D of Pandya et al. for reference to**

setting minimum thresholds for bandwidth and giving priority to allocate more bandwidth to a user when the user bandwidth monitored falls below the minimum threshold).

With respect to claims 25 and 54, Pandya et al. discloses that service level agreements specify time-of-day minimum levels of network access for users and prioritizing by comparing the monitored network access usage with the minimum time-of-day levels and giving priority to users that fall below the minimum (See column 14 lines 52 to column 15 line 22, column 21 lines 16-37, and Figures 11A-D of Pandya et al, for reference to prioritizing users based on time of day requirements and for reference to giving users priority access to more bandwidth when the current bandwidth is below a minimum threshold).

With respect to claims 28 and 57, Pandya et al. discloses respective credits for levels of network access and prioritizing based on each user's respective credit (See column 21 lines 16-37 of Pandya et al. for reference to setting minimum bandwidth thresholds, which are minimum credits, for users and prioritizing based on users being below their minimum thresholds).

With respect to claims 29 and 58, Pandya et al. discloses service level agreements specifying minimum levels of access for users and allocating access to each user's respective minimum level of network access (See column 21 lines 16-37 of Pandya et al. for reference to allocating bandwidth to users based on a minimum bandwidth threshold for the users).

With respect to claims 31 and 40, Pandya et al. discloses predicting future network access usage of each user based upon monitored past network access usage (See column 15 line 46 to column 18 line 17 and Figures 11A-D of Pandya et al. for reference to predicting a future bandwidth CB based on the monitored bandwidth UB that a user has used in a previous cycle).

With respect to claims 33 and 42, Pandya et al. discloses allocating network access to users proportional to each user's forecasted network access usage (See column 15 line 46 to column 18 line 17 and Figures 11A-D of Pandya et al. for reference to allocating bandwidth to users proportional to each user's forecasted fair share bandwidth CB by either increasing or decreasing the allocated bandwidth in accordance with the fair share bandwidth).

With respect to claims 34 and 43, Pandya et al. discloses prioritizing the user for allocating network access usage (See column 15 lines 1-22 of Pandya et al. for reference to re-allocating bandwidth for users based on priority data).

With respect to claims 35 and 44, Pandya et al. discloses that the prioritizing is based on each user's forecasted network access usage (See column 16 lines 4-28 of Pandya et al. for reference to allocating bandwidth in a prioritized method to each of the users based on the forecasted bandwidth CB).

With respect to claims 36 and 45, Pandya et al. discloses that users are prioritized in increasing order of each user's forecasted network access usage (See column 16 lines 4-28 of Pandya et al. for reference to allocating bandwidth first to users that have low allocations before allocating bandwidth to users having high

Art Unit: 2665

allocation, meaning the users are prioritized in order from low bandwidth, CB, to high bandwidth, CB).

With respect to claims 37 and 59, Pandya et al. discloses allocating network access to the users equal to each user's forecasted network access usage and then allocating remaining access equally to the users (See column 16 lines 4-28 and Figures 11A-D of Pandya et al. for reference to allocating bandwidth to users to meet the fair share bandwidth, CB, and then allocating extra bandwidth equally to users in order of priority).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 5 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pandya et al. in view of Barnes et al. (U.S. Pat. 6529486).

With respect to claims 5 and 7, although Pandya et al. does disclose monitoring and reallocating bandwidth allocations at time intervals of 5 seconds (See column 14 lines 52-68 of Pandya et al. for reference to monitoring and recalculating bandwidth allocations every five seconds), Pandya et al. does not

disclose monitoring in intervals of fifteen to sixty minutes with the monitored and future time interval being both one minute to sixty minutes in length.

With respect to claims 5 and 7, Barnes et al., in the field of communications, discloses monitoring traffic and producing a usage record in time periods of 6, 10, 15, 30, or 60 minutes (**See column 33 lines 11-25 of Barnes et al. for reference to the time periods of 15, 30, or 60 minutes, which are in the range of fifteen to sixty minutes**). Using monitoring intervals of 15, 30, or 60 minutes has the advantage of having the monitoring system take up less network bandwidth since the monitored data must only be transmitted every 15 minutes, at least, instead of every 5 seconds.

It would have been obvious for one of ordinary skill in the art at the time of the invention, when presented with the work of Barnes et al., to combine monitoring intervals of 15, 30, or 60 minutes, as suggested by Barnes et al., with the method of Pandya et al., with the motivation being to have the monitoring system take up less network bandwidth since the monitored data must only be transmitted every 15 minutes, at least, instead of every 5 seconds.

7. Claims 12, 38, and 60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pandya et al. in view of Hanco et al. (U.S. Pat. 6438141).

With respect to claims 12, 38, and 60, Pandya et al. does not disclose allocating network access equally to users and allocating extra network access to users proportionally based on a forecasted network access usage.

With respect to claims 12, 38, and 60, Hanko et al., in the field of communications, discloses allocating extra network access to users proportionally based on each user's forecasted network access usage (**See column 11 lines 33-40 and Figure 5 of Hanko et al. for reference to allocating bandwidth to users in an amount requested and then allocating remaining bandwidth proportionally to each user**). Allocating extra network access proportionally to users based on forecasted network access usage has the advantage of allowing users that require more network access to receive a higher amount of excess network access than users that require less network access.

It would have been obvious for one of ordinary skill in the art at the time of the invention, when presented with the work of Hanko et al., to combine allocating extra network access proportionally to users based on forecasted network access usage, as suggested by Hanko et al., with the method of Pandya et al., with the motivation being to allow users that require more network access to receive a higher amount of excess network access than users that require less network access.

8. Claims 14, 63, and 64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pandya et al. in view of Farah (U.S. Pat. 6567418).

With respect to claim 14, Pandya et al. does not disclose that the network is a cable network.

With respect to claim 63, Pandya et al. discloses a method of providing network access across a shared communications medium between competing users (**See**

column 4 lines 22-29 and Figure 2 of Pandya et al. for reference to a method of managing network resources of users across a shared communications medium).

Pandya et al. also discloses monitoring network access usage by each user during a time interval **(See column 15 lines 46-58 of Pandya et al. for reference to monitoring and reporting the amount of bandwidth used by a user device during a prior time period)**. Pandya et al. further discloses based on the monitoring, forecasting the number of logical data units of each user that will be transmitted over a future time interval **(See column 16 line 29 to column 17 line 4 and Figure 11A of Pandya et al. for reference to based on monitored usage, UB, forecasting that a user can send more logical data units, as in step S6 where it is determined that the used bandwidth and maximum allocated bandwidth are approximately equal with the fair share bandwidth being more than the maximum allocated bandwidth, or forecasting that a user will send less logical data units, as in step S8 where it is determined that the used bandwidth is less that the maximum allocated bandwidth)**. Pandya et al. further discloses based on the forecasting, allocating network access to each for the future time interval **(See column 16 line 28 to column 18 line 17 and Figures 11A-11D of Pandya et al. for reference to methods of dynamically allocated bandwidth to users based on the monitored bandwidth UB and forecasted bandwidth for a future time period)**. Pandya et al. does not disclose that the network is a cable network.

With respect to claim 64, Pandya et al. discloses a method of providing network access across a shared communications medium between competing users **(See**

column 4 lines 22-29 and Figure 2 of Pandya et al. for reference to a method of managing network resources of users across a shared communications medium). Pandya et al. also discloses monitoring network access usage requested by each user during a time interval **(See column 15 line 59 to column 16 line 3 of Pandya et al. for reference to monitoring users' requested bandwidth).** Pandya et al. further discloses based on the monitoring, forecasting the number of logical data units of each user that will be requested over a future time interval **(See column 16 line 29 to column 17 line 4 and Figure 11A of Pandya et al. for reference to based on monitored usage, UB, forecasting that a user will request to send more logical data units, as in step S6 where it is determined that the used bandwidth and maximum allocated bandwidth are approximately equal with the fair share bandwidth being more than the maximum allocated bandwidth, or forecasting that a user will request to send less logical data units, as in step S8 where it is determined that the used bandwidth is less than the maximum allocated bandwidth).** Pandya et al. further discloses based on the forecasting, allocating network access to each for the future time interval **(See column 16 line 28 to column 18 line 17 and Figures 11A-11D of Pandya et al. for reference to methods of dynamically allocated bandwidth to users based on the monitored bandwidth UB and forecasted bandwidth for a future time period).** Pandya et al. does not disclose that the network is a cable network.

With respect to claims 14, 63, and 64, Farah, in the field of communications, discloses monitoring and managing bandwidth demands for data over a cable TV

network using coaxial cables (**See column 1 lines 27-39 of Farah et al. for reference to the cable network**). Monitoring and allocating bandwidth of a cable network has the advantage of making sure that the users of the cable network each received their fair share of allocated network resources.

It would have been obvious for one of ordinary skill in the art at the time of the invention, when presented with the work of Farah, to combine the cable network of Farah with the method of Pandya et al., with the motivation being to make sure that the users of the cable network each received their fair share of allocated network resources.

9. Claims 26 and 55 rejected under 35 U.S.C. 103(a) as being unpatentable over Pandya et al. in view of Gemar et al. (U.S. Pat. 6,483,839).

With respect to claims 26 and 55, Pandya et al. discloses minimum levels of network access and prioritizing allocation based on these minimum levels (**See column 21 lines 16-37 and Figure 11A-D of Pandya et al. for reference to setting minimum thresholds for bandwidth and giving priority to allocate more bandwidth to a user when the user bandwidth monitored falls below the minimum threshold**); however, Pandya et al. does not disclose also using maximum burstable data levels to also prioritize users.

With respect to claims 26 and 55, Gemar et al., in the field of communications, discloses using both minimum and maximum burstable network access levels to prioritize users for network access allocation (**See column 4 lines 36-45 and column 19 lines 45-53 of Gemar et al. for reference to adjusting priority levels based on**

minimum rates and for reference to using a maximum burst state to schedule bandwidth allocations). Using both minimum and maximum burstable network access levels to prioritize users for network access allocation has the advantage of making sure each user at least receives the minimum network access allocation while also limiting users from using over a maximum bandwidth during a time period.

It would have been obvious for one of ordinary skill in the art at the time of the invention, when presented with the work of Gemar et al., to combine using both minimum and maximum burstable network access levels to prioritize users for network access allocation, as suggested by Gemar et al., with the method of Pandya et al., with the motivation being to make sure each user at least receives the minimum network access allocation while also limiting users from using over a maximum bandwidth during a time period.

10. Claims 27 and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pandya et al. in view of Hou et al. (U.S. Pat. 6324184).

With respect to claims 27 and 56, Pandya et al. does not disclose prioritizing users for network access allocation based on users' fees in decreasing order of fees.

With respect to claims 27 and 56, Hou et al., in the field of communications, discloses prioritizing users for bandwidth allocation based on decreasing order of fees paid by the users **(See column 2 lines 36-56 of Hou et al. for reference to giving priority access to excess bandwidth to users based on the fee that the user pays).** Prioritizing users for bandwidth allocation based on decreasing order of fees paid by the

users has the advantage of providing users that pay more money for network access a higher priority during network access allocation, thereby giving users an incentive to pay a higher fee for access.

It would have been obvious for one of ordinary skill in the art at the time of the invention, when presented with the work of Hou et al., to combine prioritizing users for bandwidth allocation based on decreasing order of fees paid by the users, as suggested by Hou et al., with the method of Pandya et al., with the motivation being to provide users that pay more money for network access a higher priority during network access allocation, thereby giving users an incentive to pay a higher fee for access.

11. Claims 32 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pandya et al. in view of Huang et al. (U.S. Pat. 6151852).

With respect to claims 32 and 41, Pandya et al. does not disclose using an adaptive-response-rate single exponential smoothing function and a Holt-Winters' seasonal exponential smoothing function.

With respect to claims 32 and 41, Huang et al., in the field of communications, discloses using both an exponential smoothing function and a Holt-Winters smoothing function (**See column 45 line 5 to column 47 line 48 of Huang et al. for reference to using these smoothing function**). Using both an exponential smoothing function and a Holt-Winters smoothing function has the advantage of providing accurate models to predict future values based on past values.

It would have been obvious for one of ordinary skill in the art at the time of the invention, when presented with the work of Huang et al., to combine using both an exponential smoothing function and a Holt-Winters smoothing function, as suggested by Huang et al., with the method of Pandya et al., with the motivation being to provide accurate models to predict future values of allocated bandwidth based on past values of allocated bandwidth.

Response to Arguments

12. Applicant's arguments filed 9/19/05 have been fully considered but they are not persuasive.

In response to Applicant's argument that:

"Applicant submits that *Pandya* fails to disclose, teach, or suggest at least a "method of providing network access across a shared communications medium in a downstream direction towards competing users, comprising the steps of... ***forecasting downstream network access usage by each user during a future time interval based on said monitored network access usage by each user***" as recited in claim 1 [as well as in independent claim 39]... Additionally, nowhere in *Pandya* is there any mention of "forecasting." A word search reveals that the terms "forecast," "forecasting," "project," and "predict" (as well as other similar terms) are not present in *Pandya*." (See page 16 of Applicant's Remarks section)

Art Unit: 2665

the Examiner respectfully disagrees. As shown in the rejections above, Pandya et al., at column 16 line 29 to column 17 line 4 and in Figure 11A, discloses, based on monitored usage, UB, determining that a user will need more network access, as in step S6 where it is determined that the used bandwidth and maximum allocated bandwidth are approximately equal with the fair share bandwidth being more than the maximum allocated bandwidth, or determining that a user will need less network access, as in step S8 where it is determined that the used bandwidth is less than the maximum allocated bandwidth. These steps as outlined in Figure 11A and as performed following the guidelines of Figures 11A-D are equivalent to a step of forecasting network access usage by each user during a future time interval based on monitored network access usage by each user. Pandya et al. discloses that the monitored usage is compared to allocated and fair share bandwidths to determine whether future usage will be greater or less than the currently allocated usage as in steps S6 and S8 of Figure 11A. These steps are equivalent to forecasting future network access usage. Further, the fact that Pandya et al. does not use the terms "forecast", "forecasting", "project", and "predict", as well as other similar terms, does not mean that the method disclosed by Pandya et al. at column 16 line 29 to column 17 line 4 and in Figure 11A is not equivalent to the claimed step of "forecasting". Since the method disclosed by Pandya et al. does disclose an equivalent step of "forecasting" as claimed, the rejection is proper.

Conclusion

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

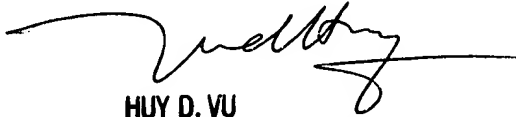
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason E. Mattis whose telephone number is (571) 272-3154. The examiner can normally be reached on M-F 8AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy Vu can be reached on (571) 272-3155. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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